IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5746 OF 2004

Rohit Natubhai Mistry ...Applicant

Versus

Jaywant P. Sanghvi & Anr ...Respondents

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Mr. Manish Mistry i/b M/s. M.P. Vashi & Associates, Advocate for Applicant.

Mr. Ganesh M. Shetty, Advocate for Respondent No.1.

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JULY, 2005

P. C.:-

1. Heard both sides.

2. The applicant has prayed for quashing of complaint No. 4185/S of 2002 (1244/S of 2003) which is pending in the Court of learned Metropolitan Magistrate, 20th Court at Mazgaon, Mumbai. In the said case, process has been issued against the applicant under Section 138 of Negotiable Instruments Act. The learned advocate for the applicant submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. If the process issued

against the applicant is set aside, the proceedings in respect of the applicant would come to an end.

3. The applicant had preferred an application for recall of process before the learned Magistrate. The said application came to be rejected by the learned Magistrate in view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors. reported in 2004 (4) Mh.L.J. 274**. In view of the said decision, it is clear that the Magistrate does not have power to recall the process, hence, in such case no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process.

4. However, for the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No. 550 of 2005, the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my opinion, it would be appropriate that the applicant prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicant to prefer revision before the concerned Sessions Court. The

learned advocate for the applicant states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. The learned advocate for the respondent i.e. original complainant fairly states that no objection would be raised in respect of delay in filing revision before the learned Sessions Judge.

6. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties. It is made clear that the revision would be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of Magistrate rejecting the application for recall of process.

7. Application is disposed of.

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